Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Lts.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on January 10, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- cancellation of the Landlord's 1 month notice to end tenancy for cause, pursuant to section 49 (the Notice);
- more time to make an application to cancel the Notice;

The Landlord was represented at the hearing by two Agents, O.B. and E.M. Both of these individuals provided affirmed testimony and will be collectively referred to as the "Landlord". The Tenant was not present at the hearing. The Tenant's wife, L.B., who is not listed on the Tenancy Agreement (provided as part of the Landlord's evidence), attended the hearing but was unclear about her role in the hearing. Part way through the hearing (approximately 12 minutes late), L.B.'s lawyer, R.T., appeared, and stated she was there to support her client, L.B. R.T. stated that she was not representing the Tenant, but rather was there to support the Tenant's wife.

During the hearing, the Landlord testified that they received the Tenant's evidence but they pointed out that it was submitted very late, and as a result they did not have a chance to look at it properly. The Landlord testified that they got the evidence on January 8, 2018, two days before this hearing.

In consideration of the above service of evidence, I turn to the Residential Tenancy Branch Rule of Procedure 3.14, which requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent (the Landlord) not less than 14 days before the hearing. Since this is the Tenant's application, the respondent would need to have received his evidence by December 31, 2017. Given the above, the Tenant's late evidence will not be accepted or addressed any further, as it would be prejudicial to the Landlord to consider it without having had a proper chance to review it.

The Landlord testified that they served the Tenant with their evidence by sending it to the rental unit by registered mail on December 28, 2018. The Landlord stated that this is the only address they have for the Tenant and they know he is still living there.

L.B. stated she was not sure if the Tenant got the evidence or not but she confirmed he is still living in the unit. Later in the hearing, L.B. stated that the Tenant did in fact go to get the evidence from the post office. Ultimately, I find L.B. was unclear and contradictory on this point. In the absence of reliable information from the Tenant which would confirm he got the Landlord's evidence, I turn to section 90 of the Act which states the following:

> **When documents are considered to have been received**
>
> **90** A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]*, unless earlier received, is deemed to be received as follows:
>
> (a) if given or served by mail, on the 5th day after it is mailed

In consideration of this, I find the Landlord has sufficiently served the Tenant for the purposes of the Act, and the Tenant is deemed to have received the evidence the fifth day after it was mailed, January 2, 2018, pursuant to section 90 of the Act.

I note that L.B. was generally unclear as to what her role was in the hearing, as she initially stated she was not acting as the Tenant's agent, but at the very end of the hearing, after I repeatedly asked her to clarify her role, she stated that she may be able to represent him since he wasn't in attendance. Further, L.B.'s lawyer, R.T., was also unclear as to what her role was in the hearing. I note that she appeared to be providing support for the Tenant's wife but she clearly stated that she was not an agent of, or lawyer for, the Tenant. However, she also was trying to provide information about the Tenant, and tried to introduce information and statements which were addressed at a different hearing (not before me) that involved the Tenant and the Landlord. Also, R.T. suggested that L.B. required help and was not able to be the Tenant's agent on her own.

I repeatedly explained to R.T. that any hearing previously held between the Landlord and the Tenant was a separate proceeding, with different grounds for review, and different considerations. Further, I explained that the previous hearing dealt with an application made by the Landlord, and this application was made by the Tenant. I also explained that the Tenant's evidence was late, and would not be admissible in this hearing. When I asked R.T. to confirm that she understood this, she was unclear in her responses, and tried to argue that all of this was "before the tribunal", despite the fact it was a different hearing for different issues. Ultimately, I made it clear that I would not be considering information and evidence provided at the previous hearing, for a different application, and that I would only be considering evidence presented at this hearing in accordance with the rules of procedure. I also made it clear that the Tenant's late evidence would not be considered.

R.T. stated that the Tenant has a public guardian and trustee and that they should have been the one served with the Landlord's evidence. In the hearing, I asked why the public guardian and trustee was not present at the hearing to act as the Tenant's agent, and I did not receive a clear answer on this point. Overall, L.B. and R.T. were unclear on several points and my attempts to clarify matters did not appear to help. The persistent lack of clarity throughout the hearing from L.B. and R.T. obfuscated the proceedings.

In further consideration of this matter, I note that this is the Tenant's application and the onus is on the applicant/tenant, or an agent of, to attend the hearing. If the Tenant, or his agent, were able to submit an application, it is reasonable to expect that whoever filed the application can ensure someone attends the hearing on his behalf and be clear about their role in the proceedings.

The Landlord has stated that they had originally applied for an early end to tenancy back in November, and similar events unfolded at the time of the hearing, which they believe is an attempt to delay their efforts to end the tenancy. They stated that they issued a notice to end tenancy back in October of 2017, and that the issues with the Tenant cannot be allowed to continue. The Landlord argued that an adjournment of this hearing would be prejudicial to them, and the interests of all other tenants in the building because of the health and safety issues caused by the Tenant. The Landlord expressed that, although they are looking to end the tenancy, they do not want to evict the Tenant without a reasonable chance to find a new place. The Landlord stated that if they get an order of possession, they do not require it to be effective immediately, and they requested that it be made for the end of February 2018, to allow the Tenant 1.5 months to find alternative housing.

Despite making several attempts to clarify who, if anyone, was actually there to represent the Tenant to help him with his application, I found it unclear whether or not the Tenant had an agent present. R.T. was clear that she was not the Tenant's lawyer or agent, and L.B was continually unclear about her role. After my continued questioning about her role in the application at hand, L.B. said in the final moments of the hearing that she may be able to speak for the Tenant, given he was not there. Ultimately, there is a lack of clarity about who is authorized to represent the Tenant. I have no written documentary evidence before me to indicate the Tenant is represented by an agent, lawyer, or a trustee. Although R.T. and L.B. have referred to a public guardian and trustee, who acted on behalf of the Tenant at the last hearing, they have provided no documentary evidence to substantiate this.

After considering the totality of the situation before me, I find there is insufficient evidence to show that either R.T. or L.B were authorized to act as the Tenant's agent, and neither of their roles were sufficiently clear as to consider either of them an agent of the Tenant. As such, there was no one present at the hearing to represent the Tenant and to proceed with the Tenant's application. As the Tenant, or an agent of, did not attend the hearing, I dismiss his application in full.

Under section 55 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession.

Conclusion

The Tenant's application is dismissed.

Pursuant to section 55 of the Act, the landlord is granted an order of possession effective **February 28, 2018, at 1 pm**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 12, 2018

Residential Tenancy Branch